



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0340]

RIN 1625-AA00

Safety Zones; Safety Zones Within the Captain of the Port New Orleans Zone; New Orleans to Baton Rouge, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing temporary safety zones for multiple locations and dates within the Captain of the Port New Orleans zone. These safety zones are necessary to protect persons and vessels from potential safety hazards associated with fireworks displays on or over federal waterways. Entry into these zones is prohibited unless specifically authorized by the Captain of the Port New Orleans or a designated representative.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through September 23, 2016. For the purposes of enforcement, actual notice will be used from June 22, 2016 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0340 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this temporary final rule, call or email Lieutenant Commander (LCDR) Howard Vacco, Sector New Orleans, at (504) 365-2281 or Howard.K.Vacco@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

BNM	Broadcast Notice to Mariners
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
MSIB	Marine Safety Information Bulletin
TFR	Temporary Final Rule
§	Section
U.S.C.	United States Code.

**II. Background Information and Regulatory History**

The Coast Guard was notified about several fireworks displays, occurring between June 22 and September 23, 2016 as follows:

(1) The U.S. Travel Association’s “IPW” Conference scheduled for one hour in the evening between 6:00 p.m. and 11:00 p.m. on June 22, 2016. The fireworks barge will be positioned adjacent to Mardi Gras World in New Orleans, LA, at approximate mile marker 96.2 above Head of Passes on the Lower Mississippi River. The Coast Guard was notified about this event on April 1, 2016.

(2) The St. John the Baptist Parish Independence Day Celebration scheduled for one hour in the evening between 6:00 p.m. and 11:00 p.m. on June 30, 2016. The fireworks barge will be positioned adjacent to the Parish Courthouse in Edgard, LA, at approximate mile marker 138.0 above Head of Passes on the Lower Mississippi River. The Coast Guard was notified about this event on March 15, 2016. This is an annually recurring event that is published in 33 CFR 165.801,

Table 5, line no. 2. This year's occurrence is scheduled for a different date and location than currently listed in the CFR.

(3) The L'Auberge Casino Independence Day Celebration scheduled for one hour in the evening between 6:00 p.m. and 11:00 p.m. on July 4, 2016. The fireworks barge will be positioned adjacent to the L'Auberge Casino in Baton Rouge, LA, at approximate mile marker 216.5 above Head of Passes on the Lower Mississippi River. The Coast Guard was notified about this event on January 27, 2016.

(4) The City of Mandeville Independence Day Celebration scheduled for one hour in the evening between 6:00 p.m. and 11:00 p.m. on July 4, 2016. The fireworks barge will be positioned adjacent to the Mandeville City Lakefront in Mandeville, LA, at approximate position 30° 21.200 N, 90° 04.500 W. The Coast Guard was notified about this event on March 14, 2016.

(5) The American Pyrotechnic Association Convention scheduled for one hour in the evening between 6:00 p.m. and 11:00 p.m. on September 23, 2016. The fireworks barge will be positioned adjacent to Dumaine Street in New Orleans, LA, at approximate mile marker 94.5 above Head of Passes on the Lower Mississippi River. The Coast Guard was notified about this event on February 24, 2016. This event was incorrectly identified as "The American Psychological Association Convention" in the NPRM.

Due to the risks associated with aerial barge-based fireworks displays taking place on and over these sections of navigable waterways, the safety zones are needed to protect persons and property. The Coast Guard will notify the public and maritime community of the safety zones and their respective enforcement periods via broadcast notices to mariners (BNM) and Marine Safety Information Bulletins (MSIB).

In response, on June 3, 2016, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zones; Safety Zones Within the Captain of the Port New Orleans Zone; New Orleans to Baton Rouge, LA (81 FR 35671). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to these fireworks displays. During the comment period that ended June 20, 2016, we received no comments.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Due to the risks associated with aerial barge-based fireworks displays taking place on and over the waterway, safety zones are needed. The Coast Guard finds that good cause exists for not waiting 30 days after publication in the **Federal Register**. Providing a full 30-days notice would be impracticable because immediate action is needed beginning June 22, 2016 to protect persons and property from the hazards associated with an aerial fireworks display taking place on and over the waterway.

The Coast Guard will notify the public and maritime community that the safety zone will be in effect and of its enforcement periods via broadcast notices to mariners (BNM).

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port New Orleans (COTP) has determined that potential hazards associated with the fireworks to be used in upcoming displays will be a safety concern for anyone within one-quarter mile of the fireworks barge for the displays on the Lower Mississippi River and within 600 feet of the fireworks barge for the display in Lake Pontchartrain. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled events.

#### **IV. Discussion of Comments, Changes, and the Rule**

Through this temporary final rule, the Coast Guard is establishing multiple temporary safety zones within the Captain of the Port New Orleans (COTP) Zone on several different dates and in several different locations. While we received no comments to the proposed rule, due to timing of the NPRM publication and cancellation of an event, 2 safety zones are removed and changes to the proposed rule are necessary. We removed the regulatory text for the first safety zone, under paragraph (a)(1) as proposed, which was for a fireworks display on June 15, 2016, from MM 94.0 to MM 95.0 above head of passes on the Lower Mississippi River. We removed the regulatory text for that safety zone because we established it through its own temporary rulemaking before the comment period for the NPRM ended. This allowed the Coast Guard to ensure that the necessary safety measures were in place for the June 15, 2016 display. A copy of that rule is available in the docket as indicated under ADDRESSES. We also removed the regulatory text for the second safety zone, under paragraph (a)(2) because that event was cancelled and the safety zone no longer needed. Accordingly, paragraphs (a)(3) through (7) of the proposed rule are renumbered in this temporary final rule as paragraphs (a)(1) through (5), with the same regulatory text as proposed in the NPRM.

These remaining safety zones will be enforced on the respective dates listed above and in the regulatory text as provided at the end of this document. Each safety zone will occur during the evening on the dates specified, and will be limited to a duration of one hour, between the hours of 6:00 p.m. and 11:00 p.m. Entry into these safety zones is prohibited unless permission has been granted by the COTP New Orleans, or a designated representative.

The COTP New Orleans will inform the public through BNMs of the enforcement period for each safety zone as well as any changes in the planned schedule. Mariners and other members of the public may also contact Coast Guard Sector New Orleans Command Center to inquire about the status of the safety zone by calling (504) 365-2200.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

Four of these safety zones are no greater than 1 river mile in length and would restrict navigation on the Lower Mississippi River for no longer than one hour. The remaining safety zone is limited to a circular area 1200 feet in diameter located along the North Shore of Lake Pontchartrain, in an area with ample room for other traffic to navigate around the safety zone, and would be in effect for no longer than one hour. Due to the limited scope and short duration of each safety zone, the impacts on routine navigation are expected to be minimal. Additionally, the Coast Guard will issue maritime notices widely available to waterway users and deviation from the safety zones may be requested and will be considered on a case-by-case basis.

## B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-

888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the



aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule establishes five temporary safety zones within the Captain of the Port New Orleans zone. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as

follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T08-0340 to read as follows:

§ 165.T08-0340 Safety Zones; Captain of the Port New Orleans Zone; New Orleans to Baton Rouge, LA.

(a) Safety zones. The following areas are safety zones:

(1) **U.S. Travel Association fireworks display, New Orleans, LA**--(i)

Location. All waters of the Lower Mississippi River from mile marker 95.7 to mile marker 96.7 Above Head of Passes.

(ii) Effective date and time. June 22, 2016, for one hour in the evening between the hours of 6:00 p.m. and 11:00 p.m.

(2) **St. John the Baptist Independence Day Celebration fireworks**

**display, Edgard, LA**--(i) Location. All waters of the Lower Mississippi River from mile marker 137.5 to mile marker 138.5 Above Head of Passes.

(ii) Effective date and time. June 30, 2016, for one hour in the evening between the hours of 6:00 p.m. and 11:00 p.m.

(3) **L'Auberge Casino Independence Day Celebration fireworks display,**

**Baton Rouge, LA**--(i) Location. All waters of the Lower Mississippi River from mile marker 216.0 to mile 217.0 Above Head of Passes.

(ii) Effective date and time. July 4, 2016, for one hour in the evening between the hours of 6:00 p.m. and 11:00 p.m.

(4) **City of Mandeville Independence Day Celebration fireworks display,**

**Mandeville, LA**--(i) Location. All waters of Lake Pontchartrain extending 600 feet in any direction from 30° 21.200N, 090° 04.500W.

(ii) Effective date and time. July 4, 2016, for one hour in the evening between the hours of 6:00 p.m. and 11:00 p.m.

(5) **American Pyrotechnic Association Convention fireworks display,**

**New Orleans, LA**--(i) Location. All waters of the Lower Mississippi River from mile marker 94.0 to mile marker 95.0 Above Head of Passes.

(ii) Effective date and time. September 23, 2016, for one hour in the evening between the hours of 6:00 p.m. and 11:00 p.m.

(b) **Regulations**. (1) In accordance with the general regulations in §165.23, entry into these zones is prohibited unless specifically authorized by the Captain of the Port (COTP) New Orleans or designated personnel. Designated personnel include Commissioned, Warrant and Petty Officers of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans. For each event, the COTP New Orleans Designated Representative will be announced via Marine Safety Information Bulletin and Notice to Mariners.

(2) Vessels requiring deviation from this rule must request permission from the COTP New Orleans or a COTP New Orleans designated representative. They may be contacted via the U.S. Coast Guard Sector New Orleans Command Center, via VHF-FM Channel 16 or by phone at (504) 365-2200.

(3) Persons and vessels permitted to deviate from this safety zone regulation and enter the restricted areas must transit at the slowest safe speed and comply with all lawful directions issued by the COTP New Orleans or the designated representative.

(c) Information broadcasts. The COTP New Orleans or designated representative will inform the public through broadcast notices to mariners of the enforcement periods for the safety zones as well as any changes in the planned schedules.

Dated: June 22, 2016.

P.C. Schifflin,  
Captain, U.S. Coast Guard,  
Captain of the Port New Orleans.

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